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In re Application of :  
KELLER et al. : DECISION  
Application No.: 10/575,019 :  
PCT No.: PCT/EP2004/011062 :  
Int. Filing Date: 04 October 2004 :  
Priority Date: 06 October 2003 :  
Attorney's Docket No.: 2584SG-5 :  
For: FIRE PROTECTION GATE AND :  
CORRELATED FIRE PROTECTION INSET :  
:

This decision is in response to applicants' "REQUEST FOR CORRECTION OF NATIONAL PHASE FILING DATE" filed on 08 June 2006, which has been treated as a petition under 37 CFR 1.10(d).

**BACKGROUND**

On 04 October 2004, applicants filed international application PCT/EP2004/011062, which designated the U.S. and claimed a priority date of 06 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 21 April 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 06 April 2006.

On 07 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an English translation of the international application.

On 08 June 2006, applicants filed the instant "REQUEST FOR CORRECTION OF NATIONAL PHASE FILING DATE", which has been treated as a petition under 37 CFR 1.10(d).

**DISCUSSION**

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 07 April 2006. The "Express Mail" label number EV788583237US is shown on the transmittal letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Finance Copy of Express Mail mailing label #EV788583237US shows a "Date In" of "4706".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition provides a satisfactory showing under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicant has not provided a satisfactory showing. No evidence from the USPS has been provided nor has any evidence that came into being after deposit and within one business day of the deposit of the correspondence with the USPS been provided, as required by 37 CFR 1.10(d)(3). Accordingly, it is inappropriate, on the present record, to accord the international application an international filing date of 06 April 2006.

The declarations of Carol Werner and Eddie Abeyta have been considered. The declaration of Carol Werner indicates that Mr. Abeyta did not return with a receipt for Express Mail mailing label #EV788583237US. However, 37 CFR 1.10(b) cautions against depositing correspondence without receiving a copy of the Express Mail mailing label. ("Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the Express Mail mailing label with the date-in clearly marked.")

#### CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional

petition fee is required.

The application is abandoned as to the United States of America for failure to pay the U.S. Basic National Fee within thirty months from the earliest priority date.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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